

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
EchoStar Satellite Corporation)	File No. SAT-MOD-20011025-00090
)	Call Sign S2231
Application for Authority to Make)	
Minor modification of Direct)	
Broadcast Satellite)	
)	
Application for Renewal of Special)	
Temporary Authority to Operate a)	File No. SAT-STA-20020123-00014
Direct Broadcast Satellite over the)	File No. SAT-STA-20020716-00115
Even-numbered Channels at the)	File No. SAT-STA-20030115-00002
148° W.L. Orbital Location)	

ORDER AND AUTHORIZATION

Adopted: April 24, 2003

Released: April 25, 2003

By the Chief, Satellite Division:

I. INTRODUCTION

1. By this Order, we modify EchoStar Satellite Corporation's ("EchoStar") EchoStar 2 satellite license to permit it to relocate EchoStar 2 from its assigned 119° W.L. orbit location to the 148° W.L. orbit location and operate it over the eight even-numbered channels assigned to EchoStar at that location. We also grant EchoStar's request to renew its special temporary authority ("STA") to operate over eight unassigned channels at the 148° W.L. orbit location. Granting this application will promote efficient use of the available radio spectrum and will enhance service to EchoStar's customers.

II. BACKGROUND

2. EchoStar operates a Direct Broadcast Satellite ("DBS") system consisting of eight DBS satellites located at the 61.5° W.L., 110° W.L., 119° W.L. and 148° W.L. orbit locations.¹ At the time EchoStar filed this application, it operated three satellites at the nominal 119° W.L. orbit location: EchoStar 4 at 118.9° W.L., EchoStar 6 at 119.05°

¹ EchoStar Application at 2.

W.L. and EchoStar 2 at 119.35° W.L. When the EchoStar 4 and 6 satellites were placed in operation at this nominal orbit location, EchoStar ceased its operation of EchoStar 2 and designated that satellite as an in-orbit spare.² Deployment of the EchoStar 4 and 6 satellites also allowed EchoStar to move its EchoStar 1 satellite from 119° W.L. to 148° W.L., where EchoStar acquired 24 DBS channels in a Commission auction in January 1996.³ EchoStar operates 16 of the 24 channels assigned to it at 148° W.L., using EchoStar 1's sixteen transponders.⁴ The remaining eight channels at the 148° W.L. orbit location are unassigned.⁵

3. In the application, before us, EchoStar proposes to relocate the EchoStar 2 satellite to 148° W.L. to operate on the eight channels licensed to EchoStar not used by its EchoStar 1 satellite at that location. In addition, EchoStar requested special temporary authority to operate on the eight unassigned channels. Pegasus Development Corporation ("Pegasus") filed a petition to deny the application to use the eight unassigned channels and EchoStar filed an opposition to Pegasus's petition to deny.

4. EchoStar also requests a waiver of the Commission's geographic service rules for EchoStar 2.⁶ The Commission's geographic service rules state that licensees acquiring DBS authorizations after January 19, 1996 must provide DBS service to Alaska and Hawaii where such service is technically feasible from the acquired orbit location. The States of Hawaii and Alaska filed comments addressing this aspect of the modification request.

² EchoStar Satellite Corporation, Application for Authority to Make Minor Modifications to Direct Broadcast Satellite Authorizations, Launch and Operation Authority, *Memorandum Opinion and Order*, 15 FCC Rcd 23636, 23640 (para. 8) (Int'l Bur., Sat. and Rad. Div., 2000).

³ See EchoStar DBS Corporation Wins 24 DBS Channels at the 148 Degree Orbit Location with a High Bid of \$52,295,999, FCC Press Release (Jan. 26, 1996). EchoStar Application at 4.

⁴ EchoStar Application at 4.

⁵ In May 2002, the International Bureau found that EchoStar had satisfied its due diligence obligations for an outstanding western DBS permit. This permit authorizes EchoStar to operate 11 western DBS channels. EchoStar Satellite Corporation, *Memorandum Opinion and Order*, 17 FCC Rcd 827 (Int'l Bur. 2001). EchoStar has indicated that the assignment of these channels could be satisfied with the eight channels at 148° W.L. and three channels at 157° W.L. See Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from David R. Goodfriend, Director, Legal and Business Affairs, EchoStar Satellite Corporation (Feb. 11, 2003).

⁶ 47 C.F.R. § 25.148(c). As discussed in Section III.C. *infra*, the geographic service rules previously found in Section 100.53 of the Commission's rules have been amended and moved to Section 25.148(c) of the Commission's rules.

III. DISCUSSION

A. Assigned Channels

5. At the time the modification application was filed, EchoStar 2 was used as an in-orbit spare at 119°W.L. EchoStar proposes to relocate EchoStar 2 to 148° W.L. and operate it on the eight channels licensed to EchoStar and not used by its EchoStar 1 satellite at that location.⁷ EchoStar states that the proposed relocation of EchoStar 2 is part of a broader effort to comply with the “carry-one-carry-all” requirements of the Satellite Home Viewer Improvement Act (“SHVIA”) that became effective on January 1, 2002.⁸ Pursuant to this requirement, if a satellite carrier decides to provide one local station in a particular city, it must carry all qualified stations in that market.⁹ According to EchoStar, moving its EchoStar 2 satellite to 148° W.L. would help it meet its obligations until additional capacity could be made available with the launch of its new EchoStar 7 and 8 satellites.¹⁰

6. According to EchoStar, there is little potential for harmful interference to any authorized user of the spectrum because it is the only entity with authority to conduct DBS operations from the 148° W.L. orbit location.¹¹ Moreover, EchoStar states that EchoStar 2 and EchoStar 1 are technically identical DBS satellites, and the Commission has already found that EchoStar 1 will not cause harmful interference from the 148° W.L.

⁷ On November 16, 2001, the Satellite and Radiocommunication Division granted a verbal STA to EchoStar, permitting it to begin to move EchoStar 2 from 119° W.L. to 148° W.L. On December 21, 2001, the Satellite and Radiocommunication Division granted EchoStar another verbal STA to operate EchoStar 2 using the eight even-numbered channels assigned to it at 148° W.L. for 30 days. On December 28, 2001, the Division granted EchoStar written special temporary authority confirming the two verbal grants and authorizing it to operate EchoStar 2 using the eight unassigned channels at 148° W.L. for 30 days. Letter from Thomas Tycz, Chief, Satellite and Radiocommunication Division, Federal Communications Commission, to David K. Moskowitz, Esq., EchoStar Satellite Corporation (December 28, 2001) (*December 28 Letter*).

⁸ SHVIA was enacted as Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999 (“IPACORA”) (relating to copyright and licensing and carriage of broadcast signals by satellite carriers, codified in scattered sections of 17 and 47 U.S.C.), P.L. 106-113, 113 Stat. 1501, Appendix 1 (1999).

⁹ 47 C.F.R. § 76.66.

¹⁰ During the pendency of this application, EchoStar has successfully launched and placed into service its EchoStar 7 satellite at 119° W.L. and EchoStar 8 satellite at 110° W.L. On January 16, 2002, the Satellite and Radiocommunication Division authorized EchoStar to launch and operate its EchoStar 7 satellite, a new “spot beam” satellite, at the 119° W.L. orbit location. *EchoStar Satellite Corporation*, Order and Authorization, 17 FCC Rcd 894 (Int’l Bur., Sat. Div., 2000). EchoStar 7 was successfully launched on February 21, 2002. On June 20, 2002, we authorized EchoStar to launch and operate its EchoStar 8 satellite at the 110° W.L. orbit location. *EchoStar Satellite Corp.*, Order and Authorization, 17 FCC Rcd 11326 (Int’l. Bur., Sat. Div. 2002). EchoStar 8 was successfully launched on August 22, 2002.

¹¹ EchoStar Application at 7.

orbit location.¹² EchoStar maintains that the move would, if anything, alleviate any risk of interference since it would place the satellite in a less congested part of the geostationary satellite orbit arc. EchoStar states that it will discontinue any operation upon notification of harmful interference caused to any authorized user of the spectrum.¹³

7. We find that grant of the requested modification of EchoStar's license for its EchoStar 2 satellite is justified and will serve the public interest. Granting EchoStar's application will permit it to use a satellite that was used as an in-orbit spare to provide DBS service on eight otherwise assigned but unused channels. Thus, permitting EchoStar to relocate and operate its EchoStar 2 satellite at 148° W.L. will result in more efficient use of available spectrum capacity and allow EchoStar to provide service that might not otherwise be available from the 148° W.L. orbit location.¹⁴

B. Unassigned Channels

8. We also note that the underlying application included a request for STA to operate on the unassigned channels at the 148° W.L. orbit location. This request was granted, subject to conditions, in December 2001.¹⁵ EchoStar has filed timely requests to extend this STA.¹⁶

9. The Division initially granted EchoStar's STA request to enable it to meet the requirements of SHVIA prior to the launch of the EchoStar 7 satellite.¹⁷ Although EchoStar 7 has since been launched, we nevertheless find that it would further the public interest, convenience, and necessity to allow EchoStar to continue operating these eight

¹² *Id.* at 8.

¹³ *Id.*

¹⁴ EchoStar notes that the DBS frequencies at 148° W.L. will also be used to support backhaul capacity, which allows the transfer of programming streams between EchoStar's Gilbert, Arizona and Cheyenne, Wyoming uplink facilities.

¹⁵ On December 28, 2001, the Satellite Division authorized EchoStar to operate EchoStar 2 using the eight unassigned channels at 148° W.L. for a period of 30 days without prejudice to EchoStar's pending modification application. *December 28 Letter*.

¹⁶ EchoStar Satellite Corporation, Application for Renewal of Special Temporary Authority to Operate a Direct Broadcast Satellite over the Even-Numbered Channels at the 148° W.L. Orbital Location, File No. SAT-STA-20020123-00014 (EchoStar January 23 STA Request); EchoStar Satellite Corporation, Application for Renewal of Special Temporary Authority to Operate a Direct Broadcast Satellite over the Even-Numbered Channels at the 148° W.L. Orbital Location, File No. SAT-STA-20020716-00115 (EchoStar July 16 STA Request); and EchoStar Satellite Corporation, Application for Renewal of Special Temporary Authority to Operate a Direct Broadcast Satellite over the Even-Numbered Channels at the 148° W.L. Orbital Location, File No. SAT-STA-20030115-00002 (EchoStar January 15 STA Request).

¹⁷ December 28 Letter.

unassigned channels until such time that the channels are assigned, and an authorized licensee begins operating on those channels on a permanent basis.¹⁸ Consequently, we grant EchoStar's request for renewal of the STA to operate on the unassigned channels at the 148° W.L. orbit location subject to the conditions set forth in the December 28 Letter and the Ordering Clauses below.

C. Waiver of the Geographic Service Rules

10. EchoStar requests a waiver of the geographic service rules for EchoStar 2. EchoStar is required to provide service to Alaska and Hawaii from any satellite it moves to the 148° W.L. orbit location as a condition of a geographic service rules waiver the Bureau granted to EchoStar in 1998.¹⁹ At the time EchoStar filed its modification application, Section 100.53 of the Commission's rules required DBS licensees authorized after January 19, 1996, to provide service to Alaska and Hawaii from the acquired orbital location whenever it is "technically feasible."²⁰ During the pendency of this application, the Commission eliminated Part 100 and made DBS service subject to the same regulations as other satellite services in Part 25.²¹ The DBS geographic service rules were amended and moved to Section 25.148(c). In pertinent part, the Commission in its order adopting the change emphasized that it is "technically feasible" to provide service to Alaska and Hawaii from the 148° W.L. orbital location.²² The Commission stated it will consider relaxing this requirement only upon provision of technical analyses demonstrating that such service is not feasible as a technical matter, or that while technically feasible such services would require so many compromises in satellite design and operation as to make it economically unreasonable.²³ The Commission also

¹⁸ Pegasus Development Corporation (Pegasus) filed an opposition to EchoStar's initial STA request. (cite) Pegasus claimed, *inter alia*, that grant of a STA would constitute a *de facto* license. Grant of the STA, however, was on a temporary, non-interference basis. Pegasus also asserted that a grant of additional spectrum to EchoStar would raise DBS spectrum concentration issues in a then pending merger between EchoStar and Hughes Electronics Corporation. The merger proceeding has been terminated. EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation, *Order*, CS Docket No. 01-348, FCC 03-01 (rel. January 13, 2003).

¹⁹ EchoStar Satellite Corporation, Directsat Corporation, Echostar DBS Corporation, Memorandum *Opinion and Order*, 13 FCC Rcd 8595, 8599 (para. 8) (1998) ("EchoStar 1 Waiver Order"). The Commission granted a waiver for EchoStar 1 to operate at 148° W.L. without serving Hawaii or Alaska based on EchoStar's provision of its "backbone" programming to subscribers in Hawaii and Alaska from the 119° W.L. orbit location.

²⁰ 47 C.F.R. § 100.53(b) (2001).

²¹ Policies and Rules for the Direct Broadcast Satellite Service, *Report and Order*, 17 FCC Rcd 11331 (2002) ("Part 100 Order").

²² *Part 100 Order*, 17 FCC Rcd at 11358 (para. 54), *citing DBS Auctions Order*, 11 FCC Rcd at 9762 (para. 128).

²³ 47 C.F.R. § 25.148(c).

emphasized that applicants and/or licensees bear the burden of providing those technical analyses.²⁴

11. EchoStar asserts that good cause exists for a waiver of the geographic service rules with respect to operation of EchoStar 2 at 148° W.L. for the same reasons it was granted a conditional waiver of these rules for EchoStar 1 at 148° W.L.²⁵ According to EchoStar, the EchoStar 1 waiver was granted because EchoStar was capable of serving, and undertook to serve, Alaska and Hawaii from the 119° W.L. orbit location instead of the 148° W.L. location. EchoStar states that this resulted in enhanced service to Alaskan and Hawaiian consumers by making available broader program offerings than would have been available from the 148° W.L. orbit location.²⁶ EchoStar asserts that there will be no degradation of service to Alaska and Hawaii if the waiver is granted. In addition, EchoStar claims that EchoStar 2 is covered by the Commission's geographic "grandfathering" provision and does not have to, and is not equipped to, serve Hawaii or Alaska from the 119° W.L. orbit location.

12. The State of Hawaii does not oppose granting EchoStar's request to relocate EchoStar 2 to 148° W.L. or EchoStar's request for a waiver of the geographic service requirements.²⁷ The State of Hawaii generally endorses EchoStar's provision of service to Hawaii, noting that EchoStar provides core backbone programming to Hawaii at about the same price it charges to customers in the continental United States.²⁸ The State of Hawaii does request, however, that we impose the same conditions on EchoStar 2 as we imposed in granting a waiver of the geographic service requirements for EchoStar 1 at 148° W.L.²⁹ The State of Alaska supports the State of Hawaii's comments.³⁰

²⁴ *Part 100 Order*, 17 FCC Rcd at 11364 (para. 63).

²⁵ EchoStar Application at 10, *citing EchoStar 1 Waiver Order*, 13 FCC Rcd 8595.

²⁶ EchoStar notes that it currently offers its "America's Top 100" package in Hawaii for the same price it offers the package in the continental U.S. In Alaska, EchoStar notes that it offers its "America's Top 70 package." EchoStar Application at 10.

²⁷ The State of Hawaii's argument is based on the geographic service rules in effect prior to the *Part 100 Order*. Those rules were set forth in 47 C.F.R. § 100.53 (the geographic service rules only apply to "those acquiring DBS authorizations after January 19, 1996" and only where service to Alaska and Hawaii "is technically feasible from the acquired orbit location").

²⁸ State of Hawaii comments at 2.

²⁹ State of Hawaii comments at 2.

³⁰ State of Alaska comments at 3. The State of Alaska also requests that general policy issues related to the geographic service rules be resolved in the context of a rulemaking proceeding and not in the context of specific applications. The Commission addressed these issues in the *Part 100 Order*, 17 FCC Rcd at 11355-67 (paras. 50-72).

13. The Commission may waive a rule for good cause shown.³¹ Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule.³² Generally, the Commission may grant a waiver of its rules in a particular case if the relief requested would not undermine the policy objective of the rule in question and would otherwise serve the public interest.³³

14. Although the Commission's geographic service rules have always embodied an important policy, it has on occasion granted waivers of those requirements. In granting a waiver of these rules for EchoStar 1 to operate at 148° W.L. the Commission found that the public interest would be served because EchoStar 1 could better provide its backbone programming to subscribers in Hawaii from its 119° W.L. orbit location. As further evidence of the waiver being in the public interest, the Commission noted that the State of Hawaii supported the waiver for EchoStar 1.³⁴

15. We find that granting EchoStar's request for a waiver of the geographic service requirements for EchoStar 2 is in the public interest for the same reasons that justified a waiver of the geographic service rules for EchoStar 1. In the *EchoStar 1 Waiver Order* we found that EchoStar could provide service to the entire CONUS, Alaska and Hawaii from the EchoStar 4 satellite at the 119° W.L. orbit location.³⁵ In that Order, the Commission also noted that the State of Hawaii supported the waiver request.³⁶ Since grant of the EchoStar 1 waiver, EchoStar has provided service to Hawaii and Alaska consistent with the conditions imposed. Granting a similar waiver of the geographic service requirements, and imposing the same conditions for EchoStar 2, will not result in any degradation of service currently provided to Hawaii or Alaska. These conditions are designed to ensure EchoStar's continuing obligation as a DBS licensee to provide service to Hawaii and Alaska despite a waiver of the geographic service requirements for a particular satellite. Accordingly, we will require that: (1) any satellite replacing the EchoStar 2 satellite at 148° W.L. would be immediately subject to the geographic service rules; and (2) EchoStar's geographic service obligation remains intact for EchoStar and its affiliates on all other satellites.

³¹ 47 C.F.R. § 1.3.

³² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990).

³³ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *Dominion Video Satellite, Inc.*, Order and Authorization, 14 FCC Rcd 8182 (Int'l Bur. 1999).

³⁴ *EchoStar 1 Waiver Order*, 13 FCC Rcd at 8598-99 (paras. 6-8).

³⁵ *Id.* at 8598 (paras. 6-7).

³⁶ *Id.* at 8599 (para. 8).

D. Technical Issues

16. EchoStar proposes to use “extended C-band frequencies” for its Tracking, Telemetry and Command (TT&C) operations for EchoStar 2 at 148° W.L. Specifically, EchoStar proposes to operate its command functions on 5923.5 MHz and 6426.5 MHz frequencies and its telemetry on the 3698.5 MHz and 3699.5 MHz frequency bands. We note that EchoStar was authorized to use these frequencies for its EchoStar 2 TT&C operations on a non-conforming use basis limited to a term expiring on January 1, 1999 in order to permit review of the suitability of these frequency bands for TT&C operations.³⁷ EchoStar’s TT&C operations in the 3650-3700 MHz extended C-band have since been grandfathered without regard to the satellite’s orbital location under the rules adopted by the Commission reallocating that spectrum to terrestrial services.³⁸ With respect to the other TT&C frequencies, we note that EchoStar has operated on these frequencies since 1996 without any evidence of unacceptable interference. On our own motion, we waive Section 25.202(g) to the extent necessary to enable EchoStar to continue performing TT&C functions for EchoStar 2 outside the allocated band as it has in the past.

17. Although EchoStar states that there is little potential for harmful interference to any authorized user, we will continue to require that EchoStar’s operations over these frequencies not cause harmful interference to authorized users. In addition, its use of the 6426.5 MHz, 3698.5 and 3699.5 frequencies makes it subject to certain conditions and other requirements set forth in various footnotes to the Table of Frequency Allocations.³⁹ Specifically, EchoStar’s use of the 6426.5 MHz extended C-band

³⁷ *DirectSat Corporation*, Order, 11 FCC Rcd 22375 (Int’l Bur. and OET, 1996).

³⁸ *Amendment of the Commission’s Rules With Regard to the 3650-3700 MHz Government Transfer Band*, First Report and Order and Second Notice of Proposed Rulemaking, ET Docket No. 98-237, 15 FCC Rcd 20488, 20502 (2000)(*Extended C-band Order*).

³⁹ At the time EchoStar was granted authority to conduct its TT&C operations in the 3698.5 MHz and 3699.5 MHz frequencies, the bands were shared on a co-primary basis with government radars. These bands have since been reallocated and are now subject to footnotes US348, US349, and NG169 to the Table of Frequency Allocations. Footnote US348 states that the band 3650-3700 MHz is also allocated to the Government radiolocation service on a primary basis at the following sites: St. Inigoes, MD (38° 10' N, 76° 23' W); Pascagoula, MS (30° 22' N, 88° 29' W); and Pensacola, FL (30° 21' 28" N, 87° 16' 26" W). All fixed and fixed satellite operations within 80 kilometers of these sites shall be coordinated through the Frequency Assignment Subcommittee of the Interdepartmental Radio Advisory Committee on a case-by-case basis. Footnote US349 states that the 3650-3700 MHz frequency band is also allocated to the Government radiolocation service on a non-interference basis for use by ship stations located at least 44 nautical miles in off-shore ocean areas on the condition that harmful interference is not caused to non-Government operations. Footnote NG169 provides that after December 1, 2000, operations on a primary basis by the fixed-satellite service (space-to-Earth) in the band 3650-3700 MHz shall be limited to grandfathered earth stations. All other fixed-satellite service earth station operations in the band 3650-3700 MHz shall be on a secondary basis. Grandfathered earth stations are those authorized prior to December 1, 2000, or granted as a result of an application filed prior to December 1, 2000, and constructed within 12 months of initial authorization. License applications for primary operations for new earth stations, major amendments to pending earth station applications, or applications for major modifications to earth station facilities filed on or after December 18, 1998, and prior to December 1, 2000, shall not be accepted unless

frequency is subject to coordination with other licensees. The frequency range 6425-6525 MHz is shared in the United States on a primary basis with the mobile service, including auxiliary broadcast, cable TV, domestic public fixed and private operational fixed microwave applications. The 5923-5924 MHz band is also allocated to amateur operations on a secondary basis. Radiolocation and amateur operations may cause interference to, and thereby affect the reliability of EchoStar's TT&C operations.⁴⁰ Accordingly, we will require as a condition of this authorization that EchoStar comply with the above footnotes to the Table of Frequency Allocations.

III. ORDERING CLAUSES

18. Accordingly, pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, EchoStar's application for modification of the EchoStar 2 license IS GRANTED and EchoStar is authorized to relocate its EchoStar 2 satellite from its present orbit location of 119° W.L. to 148° W.L., and operate it over the 8 even-numbered channels at that location that have been assigned to EchoStar.

19. IT IS FURTHER ORDERED that EchoStar is authorized to operate the eight unassigned even numbered channels at 148° W.L. on a temporary basis until such time as the channels are assigned and the authorized licensee notifies EchoStar of its plans to place the channels into service.

20. IT IS FURTHER ORDERED that this authorization does not confer any permanent authority for EchoStar to use the eight unassigned channels at the 148° W.L. orbit location. EchoStar must terminate service within 30 days of being notified that a DBS provider assigned to operate over the unassigned channels plans to place those channels into service.

21. IT IS FURTHER ORDERED that EchoStar's operation of its EchoStar 2 satellite at 148° W.L. shall not cause harmful interference to any other lawfully operated radio station and EchoStar shall cease operations immediately upon notification of such interference.

22. IT IS FURTHER ORDERED that EchoStar shall not claim protection from interference from any other lawfully operated radio station with respect to its operations on the eight unassigned channels.

the proposed facilities are in the vicinity (*i.e.*, within 10 miles) of an authorized primary earth station operating in the band 3650-3700 MHz. License applications for primary operations by new earth stations, major amendments to pending earth station applications, and applications for major modifications to earth station facilities, filed after December 1, 2000, shall not be accepted, except for changes in polarization, antenna orientation or ownership of a grandfathered earth station.

⁴⁰ See *Extended C-band Order*, 15 FCC Rcd at 20505 (para. 38).

23. IT IS FURTHER ORDERED that EchoStar's operation over the eight unassigned channels at 148° W.L. is at its own risk and EchoStar must notify its customers in writing that service over these channels is provided on a temporary basis and that service may be diminished or discontinued at any time.

24. IT IS FURTHER ORDERED that EchoStar's command operations in the 5923.5 MHz and 6426.5 MHz frequencies may not cause interference to any other lawfully operated radio station with co-primary allocation status in those frequencies and EchoStar shall cease operations immediately upon notification of such interference.

25. IT IS FURTHER ORDERED that EchoStar shall not claim protection from interference from any other lawfully operated radio station with co-primary allocation status in the 5923.5 MHz and 6426.5 MHz frequencies.

26. IT IS FURTHER ORDERED that EchoStar's telemetry operations in the 3698.5 MHz and 3699.5 MHz frequencies must comply with the terms and conditions set forth in footnotes US348, US349 and NG169 to the Table of Frequency Allocation

27. IT IS FURTHER ORDERED that the authorization granted in this Order is subject to the following conditions: (1) until the International Telecommunication Union (ITU) Region 2 Broadcasting Satellite Service (BSS) Plan and its associated Feeder Link Plan are modified to include the technical parameters of EchoStar 2 and its associated feeder links, this satellite system shall not cause greater interference than that which would occur from the current U.S. assignments in the Region 2 BSS Plan at 148° W.L. to other BSS or other services or satellite systems operating in accordance with the ITU Radio Regulations; and (2) no protection from interference caused by radio stations authorized by other administrations is guaranteed to EchoStar 2 unless and until Appendices 30 and 30A plan modification procedures are successfully and timely completed.

28. IT IS FURTHER ORDERED pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. §1.3, that EchoStar is granted a waiver of Section 25.148(c) of the Commission's rules regarding DBS geographic service, 47 C.F.R. §25.148(c), and Section 25.202(g) of the Commission's rules, 47 C.F.R. §25.202(g), conditioned as set forth in this Order above.

29. IT IS FURTHER ORDERED that the application for Special Temporary Authority filed by EchoStar Satellite Corporation on January 15, 2003 (File No. SAT-STA-20030115-00002) is GRANTED. The applications filed January 23, 2002 (File No. SAT-STA-20020123-00014) and July 16, 2002 (File No. SAT-STA-20020716-00115) are DISMISSED AS MOOT.

30. IT IS FURTHER ORDERED that the petition to deny filed by Pegasus is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas S. Tycz
Chief
Satellite Division